

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte, ROBERT D. KLUSER and WARREN L. POWERS



Appeal No. 2006-0734  
Application No. 09/841,402

ON BRIEF

Before FRANKFORT, OWENS, and NAPPI, Administrative Patent Judges.  
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 4 and 8/4. Claims 5, 7, 8/5 and 8/7, the only other claims remaining in the application, have been objected to by the examiner and also indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 6 has been cancelled.

As noted on page 1 of the specification, appellants' invention relates to a modular rack mounting system that is

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flexible to allow for mounting instruments having different environmental requirements (e.g., different requirements for cooling air circulation). Figure 1 of the application shows a typical "Prior Art" half-rack mounting structure formed from two sleeves welded together with a pair of bands welded around the front and back edges thereof for structural stability. The sleeves have ventilation holes in them in a particular configuration to allow cooling air to circulate around the instruments received within the sleeves. Figure 2 of the application shows appellants' improved modular half-rack mounting system, wherein a frame (12) that is mountable in a rack allows for the exchange of different sleeve configurations (14, 16) that accommodate instruments having different air circulation requirements. Means (26, 28) are provided for detachably securing the sleeves within the compartments of appellants' rack mounted frame structure. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Appealed Claims Appendix attached to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

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|                    |           |               |
|--------------------|-----------|---------------|
| Noda et al. (Noda) | 4,688,131 | Aug. 18, 1987 |
| Rodriguez          | 5,138,525 | Aug. 11, 1992 |
| Ryan et al. (Ryan) | 5,587,877 | Dec. 24, 1996 |
| Russo              | 6,109,329 | Aug. 29, 2000 |

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Rodriguez.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez.

Claims 2 and 8/4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Noda and Ryan.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view Russo.

Rather than reiterate the examiner's commentary regarding the above-noted anticipation and obviousness rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the examiner's answer (mailed April 21, 2005) for the reasoning in support of

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the rejections, and to appellants' brief (filed February 4, 2005) for the arguments thereagainst.<sup>1</sup>

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's above-noted rejections will not be sustained. Our reasons follow.

Claim 1 on appeal reads as follows:

1. A modular rack-mounting system comprising:

a frame suitable for mounting on an instrument rack, the frame forming a central compartment having a top, a bottom and two sides;

a sleeve within which an instrument may be mounted, the sleeve being configured to be inserted and fit within the central compartment; and

means for detachably securing the sleeve within the central compartment.

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<sup>1</sup>As noted on page 2 of the examiner's answer the rejection of claim 5 under 35 U.S.C. § 103(a), set forth on pages 3-4 of the final rejection, has been withdrawn.

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The examiner's position concerning the rejection of claim 1 under 35 U.S.C. § 102(b) is set forth on pages 3-4 of the answer. According to the examiner, the computer unit (20) seen in Figure 1 of Rodriguez is readable on appellants' claimed "frame... forming a central compartment having a top, bottom and two sides." The strut (15) joining the front and rear walls (17, 18) of the chassis within computer unit (20) is viewed by the examiner as being a "central rib." The unnumbered structure denominated by the examiner as (a) in "Attachment A Revised" affixed to the final rejection, is considered to be a "sleeve within which an instrument may be mounted," which sleeve is configured to be inserted and fit within the frame or computer unit (20) of Rodriguez. As for appellants' claimed "means for detachably securing the sleeve within the central compartment," the examiner points to unnumbered structures she has denominated (b) and (c) in "Attachment A Revised" as providing response for such securement means.

Like appellants (brief, pages 4-6), we find that the examiner has failed to appreciate the actual differences between Rodriguez and the claimed subject matter, failed to accord those differences proper patentable weight, and failed to establish a

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*prima facie* case of anticipation. The structure claimed by appellants is a "modular rack-mounting system" comprising a frame "suitable for mounting on an instrument rack," a sleeve within which an instrument may be mounted and which is configured to be inserted and fit within the recited frame, and means for detachably securing the sleeve within the central compartment of the frame. In our opinion, one of ordinary skill in the art would not view the computer unit (20) of Rodriguez as being, or forming part of, a "modular rack-mounting system" like that set forth in claim 1 on appeal, and would not view the housing of the computer unit (20) as being a "frame suitable for mounting on an instrument rack," as that terminology is used in appellants' claim 1.

Moreover, we note that the examiner has failed to establish that the unnumbered structure denominated (b) and (c) in "Attachment A Revised" is in any way the same as the means for detachably securing described by appellants in their specification or an equivalent thereof. Thus, the examiner has not provided this "means plus function" limitation its broadest reasonable interpretation, in light of and consistent with

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the written description of the invention in the present specification, as mandated by 35 U.S.C. § 112, sixth paragraph. As urged by appellants (brief, page 6), there is no basis to assume or conclude that the unnumbered structures (b) and (c) pointed to by the examiner in Rodriguez are capable of detachably securing the sleeve (a) to the chassis of the computer unit (20) in a manner required by the means recitation of claim 1. The examiner's further assertion (answer, page 6-7) that the unnumbered structures denominated (b) and (c) are slot/projection attachments that are of a type well known in the art, represents an improper use of Official Notice and is based entirely on speculation and conjecture.

Since we have determined that claim 1 on appeal is not readable on the computer unit (20) in Rodriguez and that this patent thereby does not anticipate the modular rack mounting system defined in appellants' claim 1, we must refuse to sustain the examiner's rejection of that claim under 35 U.S.C. § 102(b) based on Rodriguez.

As for the examiner's rejections of claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez; claims 2 and 8/4

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based on Rodriguez, Noda and Ryan; and claim 3 based on Rodriguez and Russo, we have reviewed the additional patents used by the examiner in making the rejections of those claims, which claims are dependent from independent claim 1, but find that the additional patents do not overcome or otherwise cure the deficiencies in the basic patent to Rodriguez noted above. Moreover, absent hindsight reconstruction, we see no basis in the applied patents for the examiner's attempted modification of Rodriguez in view of Noda and Ryan or, for that matter, of Rodriguez in view of Russo. Thus, the rejections of dependent claims 2 through 4 and 8/4 under 35 U.S.C. § 103(a) will likewise not be sustained.

Since we have not sustained any of the rejections put forth by the examiner under 35 U.S.C. § 102(b) or § 103(a), it follows that the decision of the examiner is reversed.

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REVERSED

*Charles E. Frankfort*

CHARLES E. FRANKFORT )  
Administrative Patent Judge )  
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*Terry J. Owens*

TERRY J. OWENS ) BOARD OF PATENT  
Administrative Patent Judge ) APPEALS  
 ) AND  
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